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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANNA PATRICK, et al.,

CASE NO. C23-0630JLR

11 Plaintiffs,

ORDER

12 v.

13 DAVID L. RAMSEY, III, et al.,

14 Defendants.

15 **I. INTRODUCTION**

16 Before the court is Defendants David L. Ramsey, III and The Lampo Group's
17 (together, the "Lampo Defendants") motion to dismiss and/or strike Plaintiffs' complaint.
18 (Mot. (Dkt. # 25); Reply (Dkt. # 31).) The 17 named Plaintiffs, who bring this action on
19 behalf of themselves and a proposed class, oppose the Lampo Defendants' motion.
20 (Resp. (Dkt. # 29).) The court has considered the motion, the parties' submissions, the

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1 relevant portions of the record, and the governing law. Being fully advised,¹ the court
2 DENIES the Lampo Defendants' motion to strike Plaintiffs' class allegations and
3 GRANTS in part the Lampo Defendants' motion to dismiss.

II. BACKGROUND

Below, the court sets forth the factual and procedural background of this case.

6 | A. Factual Background

7 Plaintiffs are individuals who signed contracts with and paid money to non-party
8 Reed Hein & Associates (“Reed Hein”), doing business under the name “Timeshare Exit
9 Team,” for assistance in “exiting” their obligations with respect to timeshares they owned
10 at various resort properties. (Compl. (Dkt. # 1) ¶¶ 16-66 (alleging facts regarding each of
11 the named Plaintiffs).) Plaintiffs allege that Reed Hein charged them money up front for
12 its services and promised a “100% money back refund if they were not relieved of their
13 timeshare obligations.” (*Id.* ¶ 3; *see also id.* ¶ 81.) Nevertheless, Reed Hein allegedly
14 failed to terminate Plaintiffs’ timeshare obligations, made false statements about its
15 services, and refused to refund Plaintiffs’ money when the “exits” were unsuccessful or
16 resulted in the timeshare companies foreclosing on Plaintiffs’ timeshares. (*Id.* ¶¶ 3-4; *see*
17 *also id.* ¶¶ 81-97 (describing Reed Hein’s practices).)

18 Plaintiffs, however, are not suing Reed Hein in this action—instead, they are suing
19 the parties who promoted Reed Hein’s business. Plaintiffs allege that Reed Hein hired

¹ Neither party requests oral argument (*see* Mot. at 1; Resp. at 1) and the court determines that oral argument would not be helpful in resolving the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 Defendant Happy Hour Media Group, a Kirkland, Washington based marketing firm that
 2 acts as Reed Hein’s “in-house marketing department”; Defendant Dave Ramsey, a
 3 nationally-syndicated radio talk-show host who offers “biblically based” financial advice;
 4 and Mr. Ramsey’s wholly-owned company, Defendant The Lampo Group, to promote its
 5 timeshare exit services through Mr. Ramsey’s popular radio shows, podcasts, seminars,
 6 websites, “Financial Peace University,” and newsletters. (*Id.* ¶¶ 5-6, 109-54 (describing
 7 Mr. Ramsey’s business and his relationship with Reed Hein).) Plaintiffs further allege
 8 that Reed Hein paid Mr. Ramsey and The Lampo Group over \$30 million “to make false
 9 claims and instruct [Mr.] Ramsey’s faithful listeners to hire Reed Hein.” (*Id.* ¶ 5.)
 10 According to Plaintiffs, Mr. Ramsey “assured his listeners that he had vetted Reed Hein,”
 11 “promised them that the company was the only trustworthy method to get out of their
 12 timeshare contracts,” and “made false statements about Reed Hein’s knowledge, skill,
 13 and ability to get customers out of timeshare obligations.” (*Id.* ¶¶ 7, 129; *see also id.*
 14 ¶¶ 131-32 (describing statements Mr. Ramsey made when endorsing Reed Hein).)
 15 Plaintiffs assert that Mr. Ramsey continued to promote Reed Hein even after listener
 16 complaints, multiple lawsuits (including one brought by the Washington State Attorney
 17 General), and arbitrations filed against Reed Hein should have placed him on notice that
 18 Reed Hein was defrauding his followers. (*See, e.g., id.* ¶¶ 8, 121-22, 159-64.)

19 By March 2021, Reed Hein had started to lose money after failing to serve its
 20 customers and it stopped paying Mr. Ramsey to promote its services. (*Id.* ¶¶ 9, 107-08.)
 21 Subsequently, Mr. Ramsey stopped recommending Reed Hein’s services to his followers.
 22 (*Id.* ¶¶ 10, 165.)

1 **B. Procedural Background**

2 Plaintiffs filed their proposed class action complaint in this court on April 28,
3 2023. (Compl.) They allege claims against the Lampo Defendants and Happy Hour
4 Media Group for violations of the Washington Consumer Protection Act (“WCPA”), ch.
5 19.86 RCW; negligent misrepresentation under Washington common law; and conspiracy
6 to make deceptive and fraudulent statements. (Compl. ¶¶ 201-08, 214-15.) They also
7 allege a claim against only the Lampo Defendants for unjust enrichment under
8 Washington common law. (*Id.* ¶¶ 209-13.) Plaintiffs assert these claims “for the
9 maximum time period allowable by law” on behalf of themselves and the following
10 proposed class:

11 All individuals who, during the applicable statute of limitations, paid money
12 to Reed Hein and Time Share Exit Team for the purpose of obtaining an
13 “exit” from their timeshare obligations after being exposed to, and/or in
reliance on, the statements and other representations made by Dave Ramsey,
and The Lampo Group.

14 (*Id.* ¶ 191.)

15 The Lampo Defendants filed this motion to dismiss or to strike the class
16 allegations on August 10, 2023. (Mot.) Plaintiffs filed a timely response in accordance
17 with the parties’ agreed briefing schedule, and the Lampo Defendants filed a timely
18 reply. (Resp.; Reply; *see* 7/6/23 Order (Dkt. # 17) (granting the parties’ stipulated
19 motion to set deadlines for the motion to dismiss briefing).) The Lampo Defendants’
20 motion is now ripe for decision.

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III. ANALYSIS

The Lampo Defendants move the court to (1) dismiss Plaintiffs' claim for unjust enrichment; (2) strike certain of Plaintiffs' class allegations; and (3) dismiss the claims of certain Plaintiffs as time-barred. Because the Lampo Defendants' motion to strike class allegations implicates this court's subject matter jurisdiction, the court begins by considering that motion before turning to the motion to dismiss. (*See* Mot. at 18-19 (citing 28 U.S.C. § 1332(d)(2) and arguing that if the court strikes Plaintiffs' class allegations, this court no longer has jurisdiction over this action pursuant to the Class Action Fairness Act's ("CAFA") relaxed diversity rules).)

A. Motion to Strike Class Allegations

The court denies the Lampo Defendants' motion to strike class allegations as premature. Under Federal Rule of Procedure 12(f), a court may strike "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Fed. R. Civ. P. 12(f). A court may "strike class allegations prior to discovery if the complaint demonstrates that a class action cannot be maintained." *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010); *see also Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009); Fed. R. Civ. P. 23(d)(1)(D) ("In conducting [a class action], the court may . . . require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly[.]"). "[D]ismissal of class allegations at the pleading stage," however, "should be done rarely." *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007) (quoting *Myers v. MedQuist, Inc.*, No. 05-4608 (JBS), 2006 WL 3751210,

1 at *4 (D.N.J. Dec. 20, 2006)). “[T]he better course is to deny [a motion to strike class
 2 allegations] because the shape and form of a class action evolves only through the
 3 process of discovery.” *Id.* (internal quotations omitted); *see also Johnson v. Metro-*
 4 *Goldwyn-Mayer Studios Inc.*, No. C17-541 RSM, 2017 WL 3313963, at *7 (W.D. Wash.
 5 Aug. 3, 2017) (compiling cases and noting that “most courts decline to strike class
 6 allegations prior to class certification motions and discovery”).

7 This case is in its earliest stages: the Lampo Defendants have not filed an answer
 8 and the court has not yet issued a scheduling order for discovery or class certification.
 9 Although the court has doubts as to whether this case may ultimately be maintained as a
 10 class action—particularly with respect to Federal Rule of Civil Procedure 23(b)(3)’s
 11 predominance and superiority requirements—it cannot at this time conclude that the class
 12 is uncertifiable as a matter of law. Therefore, the court DENIES the Lampo Defendants’
 13 motion to strike Plaintiffs’ class allegations and DENIES their motion to dismiss this
 14 action for lack of jurisdiction under CAFA.

15 **B. Motion to Dismiss**

16 The Lampo Defendants urge the court to (1) dismiss Plaintiffs’ unjust enrichment
 17 claim because Plaintiffs never directly conferred any benefit on the Lampo Defendants
 18 and (2) dismiss certain claims brought by certain Plaintiffs as barred by the statutes of
 19 limitations. The court sets forth the standard of review before analyzing the Lampo
 20 Defendants’ motion to dismiss these claims.

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1 1. Standard of Review

2 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint
3 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).
4 Under this standard, the court construes the allegations in the light most favorable to the
5 nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946
6 (9th Cir. 2005), and asks whether the claim contains “sufficient factual matter, accepted
7 as true, to ‘state a claim to relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556 U.S.
8 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The
9 court need not accept as true legal conclusions, “formulaic recitation[s] of the legal
10 elements of a cause of action,” *Chavez v. United States*, 683 F.3d 1102, 1008 (9th Cir.
11 2012) (quoting *Twombly*, 550 U.S. at 555), or “allegations that are merely conclusory,
12 unwarranted deductions of fact, or unreasonable inferences,” *Sprewell v. Golden State
13 Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “A claim has facial plausibility when the
14 plaintiff pleads factual content that allows the court to draw the reasonable inference that
15 the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

16 2. Unjust Enrichment

17 “Unjust enrichment occurs when one retains money or benefits which in justice
18 and equity belong to another.” *Young v. Young*, 191 P.3d 1258, 1262 (Wash. 2008)
19 (quoting *Bailie Commc’ns, Ltd. v. Trend Bus. Sys., Inc.*, 810 P.2d 12, 18 (Wash. Ct. App.
20 1991)). “Three elements must be established in order to sustain a claim based on unjust
21 enrichment: [1] a benefit conferred upon the defendant by the plaintiff; [2] an
22 appreciation or knowledge by the defendant of the benefit; and [3] the acceptance or

1 retention by the defendant of the benefit under such circumstances as to make it
 2 inequitable for the defendant to retain the benefit without the payment of its value.” *Id.*
 3 (quoting *Bailie Commc ’ns*, 810 P.2d at 18). Washington courts are clear that the
 4 “plaintiff must confer a benefit on the defendant to satisfy the first element of unjust
 5 enrichment.” *Lavington v. Hillier*, 510 P.3d 373, 379 (Wash. Ct. App.) (emphasis in
 6 original) (compiling cases), *rev. denied*, 518 P.3d 212 (Wash. 2022).

7 Plaintiffs allege that they “conferred upon [the Lampo] Defendants an economic
 8 benefit by entering into contracts and making payments to Reed Hein.” (Compl. ¶ 211.)
 9 They further allege that those payments to Reed Hein “flowed to [the Lampo] Defendants
 10 and allowed them to continue engaging in their unlawful conduct.” (*Id.*) Thus, according
 11 to Plaintiffs, the Lampo Defendants realized “economic benefits” as a “direct and
 12 proximate result of their unlawful practices.” (*Id.* ¶ 212.) Nowhere, however, do
 13 Plaintiffs allege that they conferred any benefit directly on the Lampo Defendants. (*See*
 14 *generally id.*); *see Lavington*, 510 P.3d at 379 (“The defendant must receive a benefit
 15 *from the plaintiff* for an implied contract to arise.” (emphasis in original)). To the
 16 contrary, Plaintiffs make clear that they paid money only to Reed Hein. (*See* Compl.
 17 ¶ 211 (stating the payments they made to Reed Hein “flowed to” the Lampo
 18 Defendants).) Therefore, Plaintiffs have failed to state a claim for unjust enrichment.

19 Plaintiffs assert that the first element of an unjust enrichment claim may be
 20 satisfied when the benefit is “converted and channeled through a third party.” (Resp. at
 21 15.) They rely on *Keithly v. Intelius, Inc.*, 764 F. Supp. 2d 1257, 1271 (W.D. Wash.
 22 2011), for the proposition that a plaintiff need not confer a benefit directly on the

1 defendant. (Resp. at 15.) Since *Keithly* was decided in 2011, however, the Washington
 2 Court of Appeals has repeatedly held that the first element of an unjust enrichment claim
 3 requires the plaintiff to confer a benefit on the defendant directly. *See, e.g., Lavington,*
 4 510 P.3d at 379; *Falcon Props. LLC v. Bowfits 1308 LLC*, 478 P.3d 134, 140 n.3 (Wash.
 5 Ct. App. 2020) (holding buyer's unjust enrichment claim against broker failed where
 6 seller, rather than buyer, paid the broker's commission and thus buyer did not confer a
 7 benefit on the broker); *Allyis, Inc. v. Schroder*, No. 74511-5-I, 2017 WL 751329, at *4-5
 8 (Wash. Ct. App. Feb. 27, 2017) (unpublished) (compiling cases and affirming the trial
 9 court's determination that the first element of an unjust enrichment claim requires the
 10 plaintiff to "directly confer a benefit on the defendant"). Therefore, because Plaintiffs
 11 have not plausibly alleged the first element of their unjust enrichment claim, the court
 12 GRANTS the Lampo Defendants' motion to dismiss the claim.

13 On a Rule 12(b)(6) motion, "a district court should grant leave to amend even if no
 14 request to amend the pleading was made, unless it determines that the pleading could not
 15 possibly be cured by the allegation of other facts." *Cook, Perkiss & Liehe, Inc. v. N. Cal.*
 16 *Collection Serv., Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). The court concludes that
 17 Plaintiffs can plead no facts consistent with the allegations in their complaint that would
 18 enable them to cure their unjust enrichment claim. Therefore, the court DISMISSES the
 19 unjust enrichment claim with prejudice and without leave to amend.

20 2. Statutes of Limitations

21 Dismissal is proper on the ground that a claim is barred by the applicable statute of
 22 limitations if the running of the limitations period is apparent on the face of the

1 complaint. *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (“If the allegations . . . show that
 2 relief is barred by the applicable statute of limitations, the complaint is subject to
 3 dismissal for failure to state a claim[.]”); *Morales v. City of L.A.*, 214 F.3d 1151, 1153
 4 (9th Cir. 2000). WCPA claims are subject to a four-year statute of limitations. RCW
 5 19.86.120. Claims for negligent misrepresentation and civil conspiracy under
 6 Washington law are subject to a three-year statute of limitations. RCW 4.16.080(2)
 7 (setting a three-year statute of limitations for actions for “any other injury to the person or
 8 rights of another not hereinafter enumerated”).² Plaintiffs filed this action on April 28,
 9 2023. (*See Compl.*) Thus, absent an applicable exception, the relevant statutes of
 10 limitations bar negligent misrepresentation and conspiracy claims that accrued before
 11 April 28, 2020, and WCPA claims that accrued before April 28, 2019.

12 In Washington, a “cause of action accrues and the statute of limitations begins to
 13 run when a party has the right to apply to a court for relief.” *Shepard v. Holmes*, 345
 14 P.3d 786, 790 (Wash. Ct. App. 2014) (quoting *O’Neil v. Estate of Murtha*, 947 P.2d
 15 1252, 1254 (Wash. Ct. App. 1997)). A plaintiff has the right to apply to a court for relief
 16 “when the plaintiff can establish each element of the action.” *Id.* (quoting *Hudson v.*
 17 *Condon*, 6 P.3d 615, 620 (Wash. Ct. App. 2000)). The discovery rule is an exception to
 18 this rule of accrual. *Id.* Washington courts apply the discovery rule to claims where
 19 “injured parties do not, or cannot, know they have been injured,” including claims for
 20 misrepresentation and violations of the WCPA. *Id.* (quoting *In re Estates of Hibbard*,

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 22 ² Because the court has dismissed Plaintiffs’ unjust enrichment claims, it does not address
 whether those claims are barred by the statute of limitations.

1 826 P.2d 690, 694 (Wash. 1992)). “Where the discovery rule applies, ‘a cause of action
2 accrues when the plaintiff, through the exercise of due diligence, knew or should have
3 known the basis for the cause of action.’” *Id.* (quoting *Green v. Am. Pharm. Co.*, 935
4 P.2d 652, 655 (Wash. Ct. App. 1997), *aff’d*, 960 P.2d 912 (Wash. 1998)).

5 The Lampo Defendants urge the court to dismiss (1) all claims brought by
6 Plaintiffs Robert and Samantha Nixon and Marilyn Dewey, who signed their contracts
7 with Reed Hein before April 28, 2019 (Mot. at 20 (citing Compl. ¶¶ 34, 49)); and (2)
8 negligent misrepresentation and civil conspiracy claims brought by Plaintiffs Leisa
9 Garrett, David and Rosemarie Bottonfield, Tasha Ryan, and Peter and Rachael Rollins,
10 who contracted with Reed Hein after April 28, 2019, but before April 28, 2020 (*id.*
11 (citing Compl. ¶¶ 29, 38, 41, 53)). Defendants argue that the discovery rule cannot save
12 these claims because (1) Plaintiffs did not plead facts supporting application of the
13 discovery rule in their complaint and (2) Plaintiffs should have known “about problems
14 with Reed Hein” based on the same lawsuits that they allege should have put Mr. Ramsey
15 on notice of Reed Hein’s unlawful business practices. (*Id.*; Reply at 9-10.) Plaintiffs
16 respond that none of their claims are time-barred because (1) none of their claims accrued
17 until Reed Hein breached its contracts with them; (2) in the alternative, the statutes of
18 limitations did not begin to run until Mr. Ramsey stopped promoting Reed Hein in May
19 2021; and (3) with respect to their WCPA claim, the running of the statute of limitations
20 was suspended while the Washington Attorney General’s lawsuit against Reed Hein was
21 pending. (Resp. at 23-28.) The court agrees with Plaintiffs’ first argument that their
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1 claims accrued when it became apparent that Reed Hein had breached its contracts with
2 them, rather than when Plaintiffs entered into those contracts.

3 Plaintiffs allege that the contracts they signed with Reed Hein provided for either
4 an 18-month or three-year contractual time period during which Reed Hein would
5 complete the timeshare exit process. (Compl. ¶ 168 (alleging that Reed Hein's contracts
6 stated that "it would take 1) eighteen months or 2) three years to complete the [exit]
7 process" depending on when the contracts were signed and that customers were not
8 eligible for a refund until that time expired).) Thus, Plaintiffs assert that they could not
9 have known that Reed Hein had defrauded them—and as a result, that the Lampo
10 Defendants had made false statements about Reed Hein and misrepresented its services—
11 until after the 18-month or three-year time contractual time period expired without Reed
12 Hein successfully "exiting" them from their timeshares or providing the promised
13 refunds. (Resp. at 23; Compl. ¶ 169.) The court agrees. Because the contracts provided
14 Reed Hein either 18 months or three years to complete a timeshare exit, Plaintiffs could
15 not have known that Reed Hein would not honor its commitments and that the Lampo
16 Defendants had misrepresented Reed Hein's services until after that contractual time
17 period expired. Furthermore, Plaintiffs did not suffer damage until Reed Hein breached
18 their contracts by failing to perform its promises. As a result, Plaintiffs could not
19 establish each element of their claims, and thus their claims did not accrue, until Reed
20 Hein breached their contracts. *See Shepard*, 345 P.3d at 790. Adding either three years
21 or 18 months to the dates Plaintiffs entered into their contracts with Reed Hein results in
22 accrual dates for Plaintiffs' claims after April 28, 2019 (in the case of the WCPA claim)

1 or April 28, 2020 (in the case of the remaining claims). (*See* Compl. ¶ 34 (alleging that
2 the Nixons' contract with Reed Hein, which they entered into in December 2017,
3 included a three-year contractual time period); *id.* ¶¶ 29, 38, 41, 49, 53 (alleging that the
4 remaining Plaintiffs entered into contracts with Reed Hein between April 2019 and
5 December 2019).) The Lampo Defendants' argument that Plaintiffs either knew or
6 should have known about Reed Hein's problems before April 28, 2019, or April 28,
7 2020, is not persuasive because whether Plaintiffs knew or should have known about
8 complaints or litigation in 2017, 2018, or 2019 is not apparent on the face of the
9 complaint. *See Jones*, 549 U.S. at 215. Accordingly, the court DENIES the Lampo
10 Defendants' motion to dismiss certain Plaintiffs' claims as barred by the statute of
11 limitations.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the court GRANTS in part and DENIES in part the
14 Lampo Defendants' motion to dismiss and/or strike Plaintiffs' complaint (Dkt. # 25).
15 Specifically, the court (1) DENIES the Lampo Defendants' motion to strike Plaintiffs'
16 class allegations; (2) GRANTS the Lampo Defendants' motion to dismiss Plaintiffs'
17 unjust enrichment claim; (3) DISMISSES the unjust enrichment claim with prejudice and

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1 without leave to amend; and (4) DENIES the Lampo Defendants' motion to dismiss in all
2 other respects.

3 Dated this 12th day of October, 2023.

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7 JAMES L. ROBART
8 United States District Judge
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